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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,466	11/14/2005	Gerhard Albrecht	MBZ-0465	4840
23575	7590	10/30/2006	EXAMINER	
CURATOLO SIDOTI CO., LPA 24500 CENTER RIDGE ROAD, SUITE 280 CLEVELAND, OH 44145			MARCANTONI, PAUL D	
			ART UNIT	PAPER NUMBER

1755

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/524,466

Applicant(s)

ALBRECHT ET AL.

Examiner

Paul Marcantoni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The applicants' 8/28/06 amendment, response, and affidavit/declarations are respectfully acknowledged. All previous rejections under 35 USC 112 first paragraph (new matter and enablement) and 35 USC 112 second paragraph have been withdrawn after consideration of applicants' remarks. However, the applicants' amendment adding to their specification after paragraph [0075] necessitated the new grounds of rejection below:

New Matter Objection

The applicants' amendment adding to their specification after paragraph [0075] is rejected under 35 USC 112 and 35 USC 132 as the specification as originally filed does not provide support for their now claimed invention.

Applicants' amendment adding to their specification after paragraph [0075] would appear to be new matter. Applicants can overcome by providing the location of support from original disclosure.

35 USC 103

Claims 1-18 are rejected under 35 USC 103(a) as being unpatentable over Schapira et al. '236 or Persinski et al. ('845 or '921) alone or in view of Albrecht et al. (US Patent No. 5,369,198)

Note: Albrecht et al. (WO 00/77058 A1) has been withdrawn.

Response:

The applicants argue the examiner does not have the motivation to combine the primary and secondary references above. The examiner disagrees. Schapira teach the addition of citric acid as stabilizing agent (col.3, lines 24-30) and also 2-phosphonobutane 1,2,4 tricarboxylic acid (col.5, lines 45-52). More importantly, Schapira teach that the composition of his invention can be used simultaneously with the superplasticizers of the prior art (col.7, lines 17-18). Albrecht et al. do teach a plasticizer (or superplasticizer) that is a prior art and a known and conventional superplasticizer already in use in the prior art. It would have been an obvious design choice to substitute one known superplasticizer for another known superplasticizer (Albrecht's) because they are functionally equivalent in cement mixtures.

The applicants also argue that specific other superplasticizers are preferred. Yet, a reference is good for all that it realistically teaches and is not limited to examples, preferred embodiments, etc. but is good for all that it realistically teaches. Schapira does teach that their composition can be used at the same time as with superplasticizers of the prior art of which Albrecht is one. Also, again with respect to preferred embodiments, simply because specific superplasticizer agents are less advantageous does not mean that Schapira teaches that they must not or cannot be used. These superplasticizers still work but even if not possibly the best superplasticizer.

The applicants argue that Persinski et al. '845 or '921 cannot be combined with the superplasticizer of Albrecht noting there is no motivation to combine these

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references. Applicants also provide case law to support their position. In rebuttal, the examiner disagrees. It is known in the art to add more than one dispersant (or plasticizer or superplasticizer or water reducing agent-all synonymous terms) to a cement composition. Even assuming applicants are correct that the examiner does not have the motivation to combine the components of Persinski and Albrecht on the position that it is known to add more than one flowability/dispersant additive, both do provide other motivation for combination. Albrecht teaches his copolymer may be also added to cement as a grinding aid for hydraulic binders and thus Albrecht's copolymer can still be added to the Persinski and Schapira cement composition for this purpose because a grinding aid is a conventional additive. (See Albrecht, col.6, lines 64-65). Persinski '921, for example, also teaches the addition of any of a number of conventional additives (col.5, lines 20-21). A grinding aid is a conventional additive added to cement and its addition to Persinski or Schapira's cement composition would have been an obvious design choice for one of ordinary skill in the art.

The finality of this office action is now proper. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Marcantoni
Primary Examiner
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